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Group Art Unit 3727
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCESIn re application of:
Wright et al.

Application No.: 09/415,696

Filed: October 12, 1999

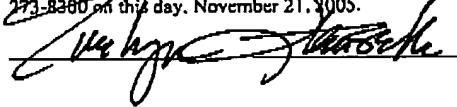
For: RECLOSABLE FASTENER
PROFILE SEAL AND METHOD OF
FORMING A FASTENER PROFILE
ASSEMBLY

Examiner: Jes Pascua

Group Art Unit: 3727

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MAIL-STOP Appeal Brief-Patents, Commissioner of Patents at (571)
273-8280 on this day, November 21, 2005.**APPELLANT'S REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41**

Dear Sir:

Appellants submit this brief in response to the Examiner's Answer mailed September 28, 2005 in the above-identified application.

I. Real Party in Interest

Appellant respectfully incorporates Section I from the Appellant's Appeal Brief filed August 15, 2005 in the above identified application.

II. Related Appeals and Interferences

Appellant respectfully incorporates Section II from the Appellant's Appeal Brief filed August 15, 2005 in the above identified application.

III. Status of Claims

Appellant respectfully incorporates Section III from the Appellant's Appeal Brief filed August 15, 2005 in the above identified application.

In summary, Claims 1, 4-10, 18 and 19 stand rejected under 35 USC 102(b) as being anticipated by the patent of Tilman ('689). The Examiner continues to insist that Tilman discloses an "airtight" seal, even though the Tilman Declaration submitted with this case states, "The seal of the '689 patent is not airtight under any definition of airtight."

Claims 1, 4-10, 18 and 19 stand rejected under 35 USC 102(b) as being anticipated by Howard ('914). The Office Action of May 28, 2004 does not address the Howard reference in the Remarks section. In addition, the Final Rejection of Claims 1, 4-10, 18 and 19 cited the patent of Howard for the first time in the Final Office Action. Accordingly, appellant respectfully submits that the rejection of Claims 1, 4-10, 18 and 19 is improper.

Claims 1, 4-10, 18 and 19 stand rejected under 35 USC 102(e) as being anticipated by Anderson ('113).

IV. Status of Amendments

Appellant respectfully incorporates Section IV from the Appellant's Appeal Brief filed on August 15, 2005. The claims listed on the claims on Appeal attached to the Appeal Brief of August 15, 2005 reflect the presently appealed claims as they stood at the time the Final Office Action was mailed on August 25, 2005.

V. Summary of Claimed Subject Matter

Appellant respectfully incorporates Section V from the Appellant's Appeal Brief filed August 15, 2005.

VI. Brief Summary of the Prior Art References

Appellant respectfully incorporates Section VI from the Appellant's Appeal Brief filed August 15, 2005 in the above identified application.

VII. Grounds of Rejection to be Reviewed on Appeal

Appellant respectfully incorporates Section VII from the Appellant's Appeal Brief filed August 15, 2005 in the above identified application.

VIII. Response to Examiner's Answer

Appellant respectfully reasserts its positions from its Appeal Brief filed August 15, 2005 and, in addition, responds to Examiner's Answer with the following brief comments.

Tilman

As noted above, the Declaration of Tilman submitted with this application states that, "The seal of the '689 patent is not airtight under any definition of airtight." The Examiner states that Appellant fails to show that Tilman's definition of an airtight seal is commensurate with Appellant's definition, as set forth in the specification. However, the Examiner also states, "Appellant's specification fails to provide any specific definition of an airtight seal." The Examiner cannot have it both ways. Tilman, on page 6 of his Declaration states, "An airtight seal is a seal that will prohibit the movement of atmospheric pressure, room temperature molecules across the seal for an indefinite period of time. Clearly, Tilman states that his fastener strip does not do this.

The Examiner then tries to expand the definition of "airtight seal" based upon the words in Appellant's specification, "interlocking ribs are included on the profiles to create an airtight reclosable seal which is suitable for a wide range of applications." The words "wide range of applications" does not make Tilman's fastener strip airtight. Even if one assumes that the "wide range of applications" included increased or decreased pressure or temperature, these conditions are more severe than atmospheric pressure and room temperature. The Examiner states that Appellant fails to provide evidence to support such a statement, but none is required. Common sense would lead one of ordinary skill in the art, let alone an Examiner, to recognize that placing greater pressure on a seal would force air through the seal. Conversely, drawing a vacuum on the seal would also draw air through it. The Tilman reference does not teach an airtight seal and trying to expand the definition through the terms "wide range of applications" does not change that fact, nor does it broaden the definition of airtight seal when none exists under any circumstances.

In an attempt to define the word "airtight", Appellant submitted Webster's *New Collegiate Dictionary* which describes "airtight" as "impermeable to air or nearly so". The Examiner noted that Tilman's Declaration states that "between the spot seal hinge and the

terminal extent of the female base 14/protuberance 15 there is no seal structure.” Nevertheless, the Examiner, without any support, states that this gap where there is no seal structure leaves the Tilman reference “nearly” impermeable to air even though Tilman himself says it does not. Clearly, the Tilman reference does not teach, suggest or imply an “airtight” seal.

Appellant’s specification does not define airtight seals. Accordingly, the term must be defined through the use of dictionaries and industry references. As noted previously in the prosecution of this case and cited in the Declaration of Donald Wright, using ASTM standards for the industry or Webster’s *New Collegiate Dictionary*, the Tilman reference is not airtight. Accordingly, it does not teach an airtight seal and does not anticipate Appellant’s invention.

Howard

Appellant has distinguished the present claimed invention from Howard as being “airtight” rather than liquid tight. Anderson, cited by the Examiner as allegedly anticipating the present invention, also distinguishes between liquid tight and gas tight seals.

The Examiner cites the patent of Howard as providing an airtight seal, based on the disclosure in the patent of Howard that a plastic bead seal “acts as a barrier to the passage of odors out of the container” (Col. 13, lines 49-50). However, the definition of a barrier according to Webster’s *New Collegiate Dictionary* is, “a material object or set of objects that separates, demarcates, or serves as a barricade.” Thus, a barrier to the passage of odors may retard the passage of odors, but it does not completely prevent them from passing. It is not “airtight”.

The Examiner states that the term “compression molded segment seal portion formed through the application of heat and pressure”, is not germane to the issue of patentability of the device itself, since the method of forming the device is not germane. However, a compression molded seal is a structural term. Applicant does not simply use the word “seal”, but rather “compression molded segment seal”. To one of ordinary skill in the art this term means a seal formed through the application of heat and pressure which is why it was included in the claims, rather than just heat as in the Howard reference. As noted previously, the Howard reference uses a bead seal in which heat is applied to the plastic which allows it to flow, rather than heat and pressure as in the present reference. Thus, Howard does not anticipate a compression molded segment seal.

The Examiner states that Howard discloses the use of a channel 120 to prevent the bar 106 from deforming the fastener, as stated on column 10, lines 17-19. This is the objective of the Howard device. However, as stated in the Anderson reference, the Examiner's reference cited as anticipating the present invention, column 2, lines 47-60, "Another practical consideration that makes the Howard process inferior, is that, although the process does attempt to reduce escaped gas, it does so by deforming the actual sealing profile of the zipper closure. By borrowing material from the interlocking portions of the zipper closure to close escape gaps, the Howard process undesirably compromises the zipper seal. Thus, although plastic bags made by the Howard process may be more leak resistant (i.e., more gas tight and liquid tight) at least than those bags made by other conventional techniques that did not eliminate escape gaps, such bags made by the Howard process would tend to open prematurely when subjected to even minor forces, for example when the contents of the plastic bag falls against the zipper closure."

It should be further noted that the patent of Howard discloses a method of simultaneously sealing the ends of the fastener strips which are already attached to plastic bag material. The bag material is sealed and cut at the same time. In the present case, applicant claims a method of manufacturing fastener strips by themselves and sealing the ends without any intervening plastic bag material.

Anderson

In regard to the patent of Anderson, Appellant has previously noted that Anderson requires a "fillet" which is a separate element from the fastener strip which does not meet the recitation "fused sections of the first and second profile strips forming the airtight seal". The Examiner attempts to contradict this assertion by stating, "Alternatively, the zipper closure could have a design in which there is an outermost finger on each of the two layers of the zipper closure wherein a fillet 60 would be added to each of the front and rear layers of the zipper closure without departing from the scope of the invention." Anderson, Column 5, lines 36-41. The Examiner states that Anderson thus clearly discloses that the fillet may be integrally formed as part of the zipper closure. However, the term "added to each of the front and rear layers of the zipper closure" does not teach that the fillets are integral, but rather that an additional piece is being "added". The term "an outermost finger on each of the two layers of the zipper closure" is distinguished from the fillet 60 added to the front and rear layers of the zipper closure.

Accordingly, Anderson does not anticipate fused sections of the first and second profile strips forming the airtight seal as claimed. An example would be a claim for two hands compression molded and sealed together as opposed to fingers interposed between the hands which seal the hands together. Clearly, the fingers are a separate element not found in Appellant's claims.

Accordingly, reconsideration and allowance of Claims 1, 4-10, 18 and 19 is respectfully requested.

Respectfully submitted,

Date:

11/21/05

By:

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CLAIMS ON APPEAL

Claim 1: A reclosable fastener profile assembly, said assembly comprising:
a continuous supply of a first profile strip including at least one rib that extends from the surface of said first strip;
a continuous supply of a second profile strip opposite said first strip; said second strip including at least two ribs that extend from the surface of said second strip; said rib of said first strip and said ribs of said second strip adapted to sealingly engage and maintain an airtight seal when so engaged;
a compression molded segment seal portion fusing said first profile strip, said second profile strip and said ribs of said first profile strip and said second strip; said compression molded segment seal including a fused section of said first and second profile strips formed through the application of heat and pressure; said fused section substantially flattened to form an airtight seal of said first and second profile strips, without distorting said ribs of said first and second profile strips outside of said fused section, thereby maintaining said airtight seal of said first and second profile strips when interlocked; and
said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment.

Claim 4: The reclosable fastener profile assembly of Claim 1, wherein said compression molded segment seal includes a severing portion of said first profile strip and said second profile strip for cutting said fastener profile and creating an individual profile fastener assembly.

Claim 5: The reclosable fastener profile assembly of Claim 1, wherein said continuous supply of first profile strips, said continuous supply of second profile strips and a plurality of said compression molded segment seal create a continuous linear supply of profile fastener assemblies.

Claim 6: The reclosable fastener profile assembly of Claim 1, wherein said first profile strip and said second profile strip are configured to fittingly mate together such that said first profile strip

is flush with said second profile strip when said first profile strip and said second profile are engaged.

Claim 7: The reclosable fastener profile assembly of Claim 1, wherein said ribs of first and second strips have respective head portions and neck portions, wherein said head portions are accurate in profile.

Claim 8 : The reclosable fastener profile assembly of Claim 1, wherein said first strip includes a first end and a second end, said second strip further including a first end and second end, wherein respective first ends and respective second ends of said first and second strips are created through application of said compression molded segment seal.

Claim 9: The reclosable fastener profile assembly of Claim 1, wherein said ribs of said first and second strips have respective head portions and neck portions, and wherein said head portions are wider than said neck portions.

Claim 10: The reclosable fastener profile assembly of Claim 1, wherein said second strip includes one more rib than said first strip.

Claim 18: A reclosable storage bag comprising:

a first bag wall;

a second bag wall;

a reclosable fastener profile assembly, said assembly comprising:

a first profile strip including at least one rib that extends from the surface of said first strip;

a second profile strip opposite said first strip said strip including at least two ribs that extend from the surface of said second strip; said rib of said first strip and said ribs of said second strip adapted to sealingly engage and maintain an airtight seal when so engaged;

a compression molded segment seal portion fusing said first profile strip, said second profile strip and said ribs of said first profile strip and said second profile strip; said compression molded segment seal including a fused section of said first and second profile strips formed through the application of heat and pressure; said fused section substantially flattened to form an

airtight seal of said first and second profile strips, without distorting said ribs of said first and second profile strips outside of said fused section, thereby maintaining said airtight seal of said first and second profile strips when interlocked; wherein said first profile strip and said second profile strip are heat sealed to said first bag wall and said second bag wall, respectively; and said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment.

Claim 19: The reclosable fastener profile assembly of Claim 1, wherein said profile assembly further includes:

a first bag wall;

a second bag wall where edges of said first and second bag walls are sealed together thereby defining an inner bag; and

said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment.